

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MICHAEL MYERS,

Plaintiff,

9:20-CV-0465
(BKS/DJS)

v.

ERICA SAXTON, *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

MICHAEL MYERS

13462261604

Plaintiff, *pro se*

Central New York Psychiatric Center

P.O. Box 300

Marcy, New York 13403

HON. LETITIA A. JAMES

New York State Attorney General

Attorney for Defendants

The Capitol

Albany, New York 12224

KONSTANDINOS D. LERIS, ESQ.

Assistant Attorney General

DANIEL J. STEWART

United States Magistrate Judge

DECISION AND ORDER

I. INTRODUCTION

This action was commenced by *pro se* Plaintiff Michael Myers (“Plaintiff”) pursuant to 42 U.S.C. § 1983. Dkt. No. 1 (“Compl.”). Plaintiff is a resident civilly

committed in the Central New York Psychiatric Center (“CNYPC”). Compl. at p. 2. Presently pending with the Court are numerous discovery-related requests filed by Plaintiff.

On September 2, 2020, this Court received a letter request from Plaintiff seeking to preserve certain recordings from March 23, 2020 he believed to be in existence. Dkt. No. 25. Defendants have advised the Court that a DVD of footage from that day is available and would be made available for Plaintiff to view. Dkt. No. 60 at p. 2. The video, therefore, has been preserved and Plaintiff’s request is denied as moot.

Next, Plaintiff filed a Motion seeking leave to conduct written depositions. Dkt. No. 51. Defendants advise that they do not oppose the request provided that Plaintiff is able to satisfy the requirements for such a deposition under the Federal Rules of Civil Procedure. Dkt. No. 52. Federal Rule of Civil Procedure 31 provides for such depositions. While Plaintiff does not need the Court’s permission to conduct such a deposition, he must comply with all the requirements for doing so under the Rules including the requirement under Rule 31(a)(3) that the notice for any such deposition “state the name or descriptive title and the address of the officer before whom the deposition will be taken.” Until such time as Plaintiff actually seeks to conduct such a deposition and establishes his ability to retain an officer to conduct the deposition, his request is premature.

Plaintiff has also filed a Motion to Compel disclosure of certain information identified by Defendants in their mandatory initial disclosure, but not provided to

Plaintiff. Dkt. No. 58. Specifically, Defendants identified certain photographs previously confiscated from Plaintiff which relate to the underlying claims. *Id.*; Dkt. No. 60. Defendants oppose turning the documents over for Plaintiff to retain for security and clinical reasons. Dkt. No. 60. At the Court's direction, Defendants' counsel provided copies of the photographs for *in camera* review. Dkt. Nos. 63 & 64. Upon review of the photographs, the Court agrees that disclosure to Plaintiff at this time would be inappropriate. The materials were confiscated by authorities at CNYPC for security reasons and so to return them to Plaintiff would be counterproductive to reasonable security concerns at the facility. Moreover, Plaintiff was in possession of these documents and so is aware of their content which minimizes any need for him to obtain copies at this stage of the proceeding. Plaintiff's Motion to Compel, therefore, is denied.¹

ACCORDINGLY, it is hereby

ORDERED, that Plaintiff's Motion to Preserve Evidence (Dkt. No. 25) is **DENIED as moot**; and it is further

ORDERED, that Plaintiff's Motion to Conduct Written Depositions (Dkt. No. 51) is **DENIED as premature**; and it is further

ORDERED, Plaintiff's Motion to Compel (Dkt. No. 58) is **DENIED**; and it is further

ORDERED, Plaintiff's Motion to file a reply (Dkt. No. 65) is **DENIED**; and it is further

¹ Plaintiff's request to file reply papers regarding his Motion is denied.

ORDERED the Clerk serve a copy of this Decision and Order on the parties.

IT IS SO ORDERED.

Date: June 1, 2021
Albany, New York

A handwritten signature in black ink, appearing to read "D. Stewart", written over a horizontal line.

Daniel J. Stewart
U.S. Magistrate Judge

D

J

S